

Minutes of a Regular Meeting

May 1, 2003

Town of Los Altos Hills

City Council Regular Meeting

Thursday, May 1, 2003, 6:00 P.M.
Council Chambers, 26379 Fremont Road

1. CALL TO ORDER, ROLL CALL, AND PLEDGE OF ALLEGIANCE

Mayor Fenwick called the Regular Meeting of the City Council to order at 6:10 p.m. in the Council Chambers at Town Hall.

Present: Mayor Fenwick, Mayor Pro Tem Cheng and Councilmembers Kerr and Warshawsky
Absent: Councilmember O'Malley
Staff: City Manager Maureen Cassingham, City Attorney Steve Mattas, Planning Director Carl Cahill, City Engineer/Director of Public Works Mintze Cheng, Administrative Services Director Sarah Joiner, and City Clerk Karen Jost
Press: Tim Seyfert, Los Altos Town Crier, Christina Bellantoni, Palo Alto Daily News and Kellie Schmitt, San Jose Mercury News

MOTION SECONDED AND CARRIED: Moved by Cheng, seconded by Warshawsky and passed unanimously to limit the length of time for public comments to three minutes or more at the Mayor's discretion.

Mayor Fenwick requested to add "Item 9.1 Consideration of a Special City Council Meeting to discuss the Adobe Creek Watershed Project" to the meeting agenda.

PASSED BY CONSENSUS OF THE COUNCIL: To add Agenda Item 9.1.

Mayor Fenwick explained Councilmember O'Malley's absence from this evening's meeting was due to the recent death of his mother.

Mayor Fenwick noted that tonight's meeting would be adjourned in memory of Richard Lamparter. Mr. Lamparter had been a very active volunteer in our community and his services were greatly appreciated.

2. APPOINTMENTS AND PRESENTATIONS

None

3. PLANNING COMMISSION REPORT

None

4. CONSENT CALENDAR

Items Removed: Item 4.1 (Fenwick), Item 4.2 (Joiner)

MOTION SECONDED AND CARRIED: Moved by Cheng, seconded by Warshawsky and passed unanimously by those members present, with Mayor Fenwick recusing himself from the vote, to approve the remainder of the consent calendar, specifically;

- 4.3 Notification of Planning Commission Approval of a Request for a Site Development Permit for Grading and Variance to Grade within a Joint Property Line: Lands of Askari, 27830 Elena Road (Lot C) and Lands of Woo and Tam, 27890 Elena Road (200-02-ZP-SD-GD-VAR)

Items Removed:

- 4.1 Approval of Minutes: Regular City Council Meeting, April 17, 2003

MOTION SECONDED AND CARRIED: Moved by Cheng, seconded by Warshawsky and passed unanimously to approve the minutes of the April 17, 2003 Regular City Council Meeting as amended with the following correction: page 7, Item 7.1 the date should read May15, 2003.

- 4.2 Approval of Warrants: 03/28/03 – 04/25/03 \$283,293.28

Administrative Services Director requested that this item be continued to the next Regular City Council Meeting on May 15, 2003.

5. UNFINISHED BUSINESS

5.1 Update on Mayor's Goals

5.1.1 New Town Hall –Status Report

Councilmember Kerr advised Council on the progress that is being made by the new Town Hall Committee. The architects have submitted their proposals and they will be evaluated by the Committee at their next scheduled meeting, May 6, 2003. Interviews of selected candidates are tentatively scheduled for May 13, 2003. The Committee will return to the City Council on May 15, 2003 with their recommendations.

5.1.2 Undergrounding of Utilities – Status Report

Councilmember Warshawsky reported that the next Undergrounding Committee Meeting is scheduled for May 8, 2003.

5.1.3 Master Pathway Map – Committee Report

Dot Schreiner, 14301 Saddle Mountain Drive, Ad Hoc Pathway Easement Committee member, reported that the Committee is continuing to meet every Friday to identify and verify pathway easements.

5.1.4 View Protection Ordinance –Public Hearing

Public Hearing Item 11.1 on tonight's Agenda.

6. NEW BUSINESS

6.1 Discussion of Summer/Fall City Council Meeting Schedule

MOTION SECONDED AND CARRIED: Moved by Warshawsky, seconded by Kerr and passed unanimously to cancel the Regular City Council Meeting of July 3, 2003.

The City Council will revisit their summer/fall meeting schedule at a later date.

6.2 Appointments of Prospective Members to the Open Space Committee – Nine Vacancies

Council had before them applications from nine candidates for their consideration. Mayor Fenwick asked if there had been any late submittals of applications. The City Clerk notified the Council that there had not been any additional applications tendered for the Open Space Committee positions. There was a brief introduction of those applicants present.

MOTION SECONDED AND CARRIED: Moved by Kerr, seconded by Cheng and passed unanimously to appoint the following residents to serve on the Open Space Committee for four year terms: Dianne Cassam, Ray Collins, Patty Ciesla, Nancy Couperus, Mary Davey, Elaine Nelson, Duffy Price, Roger Spreen, and Jean Struthers.

6.3 Appointments of Prospective Members to the Emergency Communications Committee – Four Vacancies

MOTION SECONDED AND CARRIED: Moved by Fenwick, seconded by Kerr and passed unanimously to appoint the following residents to serve on the Emergency Communications Committee for four year terms: Ray Egan, Edwin Jones and Jack Trollman.

6.4 Consideration of Gift of Farm Equipment from the Los Altos Hills Historical Society

City Manager Maureen Cassingham introduced this item to the City Council. Cassingham explained that Council had before them a staff report that included a letter from the Burkhardt – Snell Family offering a donation to the Town of a 1906-07 Bean Company Orchard Sprayer and a letter supporting the donation by the Los Altos Hills Historical Society. The Los Altos Hills Historical Society provided the shelter for the Town's collection of antique farm implements and they are requesting Council's consideration of this gift to be added to the present collection. Cassingham noted that the Historical Society is also requesting the Town staff's assistance in rearranging the farm equipment to accommodate the sprayer and off-loading it from its trailer to the shelter.

Cassingham added that the addition of this donation would not generate any increase in the Town's liability and property insurance costs.

Council discussion ensued regarding the appropriateness and condition of the gift

Dan Alexander, resident and Vice President of the Los Altos Hills Historical Society, addressed Council. He explained that the sprayer is similar to ones that were used in Los Altos Hills by the Buckhart Brothers to spray the Town's numerous apricot orchards. The Buckhart family home was built in 1923 and still exists on the corner of Fremont Road and La Paloma Road.

MOTION SECONDED AND CARRIED: Moved by Fenwick, seconded by Warshawsky and passed unanimously to accept the donation of a 1906-07 Bean Company Orchard Sprayer from Carolyn and Don Snell.

6.5 Proposed Policy for Town Proclamations

City Manager Maureen Cassingham explained to Council that the proposed policy guidelines had been developed at the suggestion of Mayor Pro Tem Cheng. The guidelines not only address Proclamations but various forms of City Council recognition. Cassingham noted that the guidelines from other cities were researched to assist in the formulation of the policy draft before the Council.

Mayor Fenwick stated that the proposed policy guidelines for Proclamations is very similar in nature to the unwritten procedure he has followed as Mayor in evaluating requests for recognition. Fenwick added that it has been at his discretion to move appropriate requests for Proclamations forward to a Council agenda for consideration. Mayor Fenwick added that he is judicious in his review and would like to see the Mayor retain this authority.

Fenwick added that Resolutions are all presently agendized for City Council action and there is no change in this procedure suggested in the draft policy guidelines.

Mayor Pro Tem Cheng explained that when she received the letter requesting the Proclamation to be considered following this discussion and it was accompanied by a

Proclamation from San Francisco and a Proclamation from Cupertino, it seemed like an appropriate time to discuss the Town's policy regarding Proclamations.

Councilmember Warshawsky commented that he approved of the policy guidelines, noting that recognition of citizens and agencies is an important function of the Council. Warshawsky added that he would like the naming of Town Pathways, similar to the Artmis Ginston Path, considered for inclusion in the guidelines

MOTION SECONDED AND CARRIED: Moved by Kerr, seconded by Cheng and passed unanimously to adopt the Town of Los Altos Hills Guidelines for Proclamations, Commendations and Commemorations.

6.5.1 Proclamation Honoring the Hong Kong Alumni Association

Mayor Fenwick chose not to move Item 6.5.1 forward for Council consideration.

7. REPORTS FROM COMMITTEES, SUB-COMMITTEES, AND COUNCILMEMBERS ON OUTSIDE AGENCIES

Mayor Pro Tem Cheng reported on her attendance at the Parks and Recreation Committee meeting. There is a "Walk/Run" event scheduled for May 10. The start for the race will be at Westwind Barn. The Committee also discussed the need to buy or lease a horse to provide year-round horsemanship classes. The Parks and Recreation Committee has submitted a request for a park bond to renovate the bathrooms at the Little League Field. The estimated cost is \$4000. Cheng added that the Committee would like to use the Town's horse ring on Purissima Road as a sports court.

Mayor Pro Tem Cheng advised residents that the summer camps are filling up quickly and urged interested parties to apply as soon as possible.

Cheng reported that she had attended the Santa Clara Library Joint Powers Authority Meeting. The tentative budget for the libraries was reviewed. She reminded Council that the parcel tax supporting the library will expire in several years and she encouraged everyone to get residents to support the renewal of the tax.

Councilmember Kerr suggested that more Town Committees use the facilities at the library for their meetings.

Councilmember Kerr reported that two additional Los Altos Hills residents have been added to the membership of the 7-11 Committee. At the last meeting of the 7-11 Committee, by an 8-3 vote, Bullis School was declared surplus property. Plans for the site include the rental of the buildings, however, the recreational fields will remain open.

8. STAFF REPORTS

8.1 City Manager

The City Manager reminded Council that a presentation by the Sheriff's Department on home burglary and identity theft prevention has been scheduled for May 29, 2003 at 7pm in the Bullis School Multi-Purpose Room. It is open to all residents of the Town and will be widely advertised.

8.2 City Attorney

8.3 City Clerk

8.3.1 Report on Council Correspondence

9. COUNCIL-INITIATED ITEMS

9.1 Consideration of a Special City Council Meeting to discuss the Adobe Creek Watershed Group Proposed Request for Support

Mayor Fenwick suggested that the meeting be scheduled after Councilmember O'Malley returns and after the City of Los Altos scheduled hearing on this item.

MOTION SECONDED AND CARRIED: Moved by Kerr, seconded by Cheng and passed unanimously to schedule a Special City Council Meeting on May 7, 2003 at 8:30 am.

10. PRESENTATIONS FROM THE FLOOR

Barbara Lamparter, 12864 Viscaino Road, thanked the Council, Town staff and the community for the outpouring of support and generosity of love she has received this past week.

Nancy Couperus, 13680 Page Mill Road, reported that the recent Earth Day celebration at Westwind Barn had been very successful. Approximately 300 people participated. The attendance was down slightly from last year but she considered it a good turn out considering the inclement weather conditions.

John Harpootlian, 26435 Anacapa Drive, read a statement to Council. As a representative of a civic organization in Town, he requested that the Webmaster of Hills2000 be included in the Emergency Email database of the Town. Harpootlian stated that he had made this request to City Clerk Pat Dowd last summer and later she confirmed that he was on the email list. He has since spoken with the City Manager regarding this matter and she stated that she would review his request with Council. Harpootlian questioned how and when Hills2000 was removed from the list. He requested copies of all correspondence that has been sent out to the database from the Town.

Mayor Fenwick asked City Manager Cassingham if she wished to respond to Mr. Harpootlian's statement.

The City Manager stated that Council would be provided a report on this issue.

Louise Pahl, 27431 Black Mountain Road, spoke in support of the proposed View and Sunlight Protection Ordinance. She stated that Los Altos Hills residents often purchase their homes for the views and vistas from their property and the present Town landscaping guidelines includes trees that are inconsistent with view protection. Pahl concluded by saying, it is in the best interest of the residents of Los Altos Hills that this ordinance be adopted.

Mayor Fenwick asked that any additional speakers that wish to address Council on the proposed View and Sunlight Protection Ordinance hold their comments for the Public Hearing.

11. PUBLIC HEARINGS

- 11.1 Section(s) 10-2.8.1.01 – 10-2.8.1.16 View and Sunlight Protection Ordinance: The Proposed Ordinance Would Establish Property Owner Rights to Maintain Views or Access to Sunlight and a Process by Which Persons May Seek Restoration of Such Views or Sunlight that Existed at the Time of the Adoption of this Ordinance from Unreasonable Obstruction by the Growth of Trees and Shrubs.

Mayor Fenwick explained his motivation for considering the possibility of establishing a View Protection Ordinance for the Town as one of his goals as Mayor. He found it incongruous that the City Council would focus on new construction blocking views, requiring story poles to illustrate the potential impact on the views but not focus on landscaping with rows of trees that could have the same effect on a neighbor's view.

Fenwick requested Planning Director Carl Cahill present an overview of the ordinance to the Council.

Cahill reported that the Planning Commission had discussed and reviewed the draft ordinance that was before Council at their March 13, 2003 Planning Commission Meeting. They voted 5-0 to recommend approval of the view protection ordinance. The proposed ordinance is based on a similar ordinance in use in the Towns of Tiburon, Belvedere and Hillsborough. Cahill noted that the Planning Commission has recommended that the ordinance not be applied retroactively as is the case with the Tiburon ordinance. The Planning Commission is also recommending that trees and other vegetation located in required conservation easements be exempt from the provisions of the ordinance.

Cahill explained that the view protection ordinance is unique. It establishes a property owner's rights to unreasonable obstruction of views from landscaping and it will be privately enforced. Cahill described the four-step process provided by the proposed ordinance for resolving view and sunlight obstruction disputes between neighbors. The first step would be initial reconciliation consisting of an informal meeting between the complaining party and the tree owner. If this fails, then the complaining party would propose mediation. If mediation fails or is declined, then the complaining party would prepare a Tree Claim and offer to submit the dispute to binding arbitration. The final step in the four-step process is litigation.

Cahill presented Council with results from the Town of Los Altos Hills Community Preference Survey that was conducted in 2001. Residents were asked if new landscaping should be restricted in height in order to preserve the views of neighbors and 67.7% of those responding said yes. Cahill noted that this ordinance is intended to address this issue.

Mayor Fenwick recounted that the staff from the City of Tiburon reported few problems with their ordinance even though the guidelines for Tiburon are retroactive to when the property owner purchased the property. Fenwick added that the Town's ordinance had been amended to establish the view that the property owner has the right to preserve as the view that exists at the time that this ordinance is approved.

The Mayor asked Carl to explain other differences between the Town's proposed view ordinance and the Tiburon ordinance particularly how it applies to Redwood trees.

Cahill clarified for Council that the Town of Tiburon does list Redwood trees as an undesirable species of tree. However, the Planning Commission, during its review of the proposed ordinance, determined that it would be more appropriate to set Redwood trees in a category that advises landscapers and property owners of their potential height and direction to plant them with careful consideration but does not identify them as undesirable.

Councilmember Warshawsky questioned the reference to businesses in the first page of the draft ordinance section 2. Following Council discussion, it was decided to change the text to read "institutions".

Councilmember Warshawsky noted that the property owner who is requesting restoration of his views is referred to as "the complaining party". He asked if another "name" would be more appropriate. Following discussion, the text the "complaining party" was retitled to "the initiating party".

OPENED PUBLIC COMMENT

Nancy Kelem, 26323 Esperanza Drive, commented that when they purchased their home in Los Altos Hills, they thought they were buying a view. The CC&R's that are included in the Title Deed of her property clearly state that her view is protected. Much to her

disappointment, she has discovered that CC&R's have little validity. She urged Council to adopt the proposed ordinance.

Resident (no card), explained that he hoped the City Council would adopt an ordinance with more "teeth". He is disappointed that litigation is the only real recourse for the property owner.

Chong Peng, 12129 Par Court, stated his displeasure with the proposed ordinance. Specifically, he feels that the language of the ordinance is too abstract. He encouraged Council not adopt the ordinance but send it back to a committee for more study.

Resident (no card), 12143 Hilltop, questioned why proposed landscape plans can still be submitted to the Town with rows of Pine trees and rows of Eucalyptus trees. She believes these trees should be deemed undesirable and not permitted in new landscaping.

Michele Woo, 26344 Esperanza Drive, explained that she is concerned that trees used to mitigate unattractive and unsightly properties will be cut down.

Cathy Schibel, resident, described the views from her property. She has worked closely with her neighbors to view obstructions. Schibel said she is concerned about "scrub" Oak trees that can become dense and block views and are not addressed in this ordinance.

Gary Cleary, 26410 Silent Hills Lane, commended Mayor Fenwick for his efforts to establish a view protection ordinance for the Town. Cleary recommended that the Council investigate view policies from other hillside communities, particularly Pacific Heights in San Francisco, where the neighbors have agreed to allow trimming of street trees to accommodate views. He suggested that the Town's Committees could play a role in reviewing the "tree complaints" if the mediation process fails. Cleary would like to see the ordinance be retroactive.

Sydney Oldberg, 27250 Julietta Lane, thanked the Council for taking up this issue. He has owned his property for 27 years and his view has disintegrated over time.

Sandra Humphries, Environmental Design Committee member, commented that she is pleased that the issue of view protection has surfaced, however, she would like to see the ordinance reviewed in more detail. Humphries is particularly concerned that nesting raptor birds will be impacted if trees are pruned at the inappropriate time. She also supports using landscaping as a mitigating means for hillside homes.

Beverly Bryant, 27060 Appaloosa Way, commented felt it was imperative for the Council to spend more time assessing the details of this ordinance. Bryant suggested a citizens committee be formed to further review the ordinance and educate the community on the particulars. She is very concerned about the misinformation that is being disseminated in the Town and believes citizen participation is a remedy.

Jim Abraham, 12831 Viscaino Road, noted that the ordinance will have minimal personal impact since trees that block his view have been trimmed. However, he found several flaws in the ordinance that should be addressed by the Council specifically; Town

property and conservation easements are exempt from the ordinance, the Tiburon ordinance prohibits the planting of any undesirable trees without a permit and this has been omitted from the Town's version of the ordinance, Redwood trees should be treated the same as Eucalyptus trees and Pine trees. Abraham would like the ordinance to ban the indiscriminate planting of "weed" trees. He urged Council to reevaluate the Town's view ordinance, revert to the Tiburon ordinance and include the retroactive clause that allows the property owner to seek the restoration of his view when he purchased his property and can clearly demonstrate what the view was at that time.

Mike Wagner, 26786 Robleda Court, commended the Council on their efforts to establish a view ordinance. As a former resident of Malibu, California, where views are similarly valued, Wagner said the view protection ordinance worked there and it will work in Los Altos Hills. He added that he has converted his home to total solar energy and he would like to see solar easements included in the ordinance.

Patty Ciesla, 11990 Page Mill Road, thanked the Council for considering this ordinance. She would like Council to review the present ordinance further and include the retroactive clause that is in the Tiburon ordinance. Ciesla added that it is important to consider the inclusion of language protecting nesting birds.

Carol Gottlieb, 24290 Summerhill Avenue, stated she would like to see a view ordinance adopted by the City Council that includes buildings and view corridors. Trees planted in view corridors could be limited to the height of the house. Gottlieb is concerned that the ordinance does not better define which neighbor is blocking the view and would like to see more detail in the ordinance. She thanked Mayor Fenwick for bringing this view ordinance forward.

Sandra Humphries, 26238 Fremont Road, hoped Council would consider hiring a Town arborist if the view ordinance is adopted.

Kay Sasaki, 12922 Tripoli Court, thanked Mayor Fenwick for illustrating the need for this ordinance. Sasaki added that in an ideal world neighbors would be thoughtful and considerate of each other but the reality is some neighbors are nice and some are not cooperative. She appreciates having a vehicle to resolve view disagreements but hoped the Council would adopt an ordinance with more "teeth".

Lisa Peterson, 10310 Magdalena Road, expressed her support of the view ordinance. She would like language added to the ordinance for stronger enforcement. Peterson hoped the ordinance would not be just an expression of philosophy.

Jim Abraham, 12831 Viscaino Road, restated his support of Council using the language of the Tiburon view ordinance.

Jolan Wagner, 26786 Robleda Court, suggested that the ordinance address fire danger concerns and make landscape architects accountable for planting undesirable trees.

CLOSED PUBLIC COMMENT

Mayor Fenwick stated the primary difference between the proposed ordinance and the Tiburon ordinance is the issue of retroactivity. He asked Council for their input on this dynamic.

Mayor Pro Tem Cheng said that after listening to the concerns of the audience, she would be comfortable supporting an ordinance that establishes retroactivity to the date the property was purchased. Cheng added that Council could adopt the ordinance with the retroactivity clause and revisit the issue in one year to evaluate the ordinance.

Councilmember Kerr stated that he could support some retroactivity but was not comfortable with a potential of fifty years.

Councilmember Warshawsky asked the City Attorney for his opinion on the issue of retroactivity and what possible exposure the Town could experience from adopting such a clause.

City Attorney Steve Mattas clarified that the retroactivity provision of the Tiburon view ordinance has been tested in Court and has been deemed valid. Mattas added that the initiating property owner would be required to show proof of the existing view at whatever time frame is adopted by the Council.

Planning Director Cahill stated that the Town of Tiburon has not experienced any difficulties with the retroactivity clause.

Councilmember Warshawsky asked Cahill to address the issue of the number of complaints he receives regarding view obstruction.

Cahill noted that he receives one or two a month, however residents realize there is no resolution available for their complaints, so many choose not to contact the Town. Cahill added that the Community Preference Survey illustrates the importance of views to the residents.

Following discussion on the issue of retroactivity, Council concurred that fifteen years or when the owner purchased the property, whichever is shorter, would be an appropriate time frame for the Town's ordinance. Council noted that the rationale for setting fifteen years was to limit aggressive cutting of trees.

Mayor Fenwick requested the language in Section 10-2.8.1.16 pertaining to landscaping in conservation easements be amended to exempt only naturally occurring native species. Councilmember Warshawsky requested language be added to the ordinance regarding nesting birds.

The City Attorney asked that the provision of protecting nesting birds return to Council as a separate amendment.

Steve Mattas recommended that Council direct staff to return with the revised ordinance as an action item introduced at the next meeting.

PASSED BY CONSENSUS OF THE COUNCIL: To direct staff to return to the City Council with the revised ordinance for their consideration at the next Regular Scheduled City Council meeting.

Council adjourned to Closed Session at 8:35 pm.

12. CLOSED SESSION

CLOSED SESSION: CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION: Government Code Section 54956.9(a): Campbell and Ligeti v. Town of Los Altos Hills

CLOSED SESSION: CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION: MacDonald et al. v. Town of Los Altos Hills et al. Case No. CV 813186

The City Council considered the items listed on the closed session agenda and provided direction to staff.

Council reconvened into Open Session at 9:00 p.m.

There was no action taken.

13. ADJOURNMENT

There being no further new or unfinished business, the meeting was adjourned in memory of Richard Lamparter at 9:05pm

Respectfully submitted,

Karen Jost
City Clerk

The minutes of the May 1, 2003 Regular City Council Meeting were approved at the Regular City Council Meeting of May 15, 2003.